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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

In re:

SEARS HOLDINGS CORPORATION, *et al.*,

Debtors.

Chapter 11

Case No. 18-23538 (RDD)

(Jointly Administered)

**SANTA ROSA MALL, LLC’S STATEMENT OF ISSUES TO BE PRESENTED AND
DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL**

TO THE HONORABLE COURT:

COMES NOW Santa Rosa Mall, LLC (“Santa Rosa” or “Appellant”), by and through its undersigned counsel, respectfully submits its statement of issues to be presented and designation of items to be included in the record on appeal with respect to the appeal from the *Order Denying Motion of Santa Rosa Mall, LLC for Relief from the Automatic Stay* (the “Order”, Docket No. 7881) entered by the United States Bankruptcy Court for the Southern District of New York on April 30, 2020, before the United States District Court for the Southern District of New York at Case No. 20-cv-03923, pursuant to Fed. R. Bank. P. 8009(a)(1) and LBR 8009-1:

I. Statement of Issues to be Presented on Appeal

1. Whether the Bankruptcy Court erred and abused its discretion by failing to acknowledge, with respect to issues of insurance contract law and jurisprudence discussed in the *Memorandum of Law on Puerto Rico’s Insurance Law in Compliance with Court Order* filed on March 27, 2020 (Docket No. 7531), that Santa Rosa has a separate and distinct right in the Contract of Insurance for Policy No. PTNAM1701557 (the “Contract of

Insurance”) to claim directly from certain interested underwriters subscribing to, *inter alia*, Policy No. PTNAM1701559 (the “Underwriters”)¹; that such action is a “First-Party” property insurance claim and should be entertained in non-bankruptcy courts sitting in Puerto Rico on account of the reverse preemption doctrine established in the McCarran Ferguson Act, 15 U.S.C. § 1012 *et seq.*, and the provisions of the Puerto Rico Insurance and Civil Codes; and, it should defer to such non-bankruptcy courts on issues including, but not limited to, breach and interpretation of the Contract of Insurance, Santa Rosa’s insurable interest, and the improper payment doctrine recognized in the Puerto Rico Civil Code.

2. Whether the Bankruptcy Court abused its discretion in denying the *Motion for and an Order Finding the Automatic Stay Inapplicable or, in the Alternative, for Relief from the Automatic Stay and Memorandum in Support Thereof* (Docket No. 6317) by improperly balancing the factors to be weighed in deciding whether litigation should be permitted in another forum against a non-debtor third party under applicable law.
3. Whether the Bankruptcy Court abused its discretion in holding that a post-petition Confidential Settlement and Release Agreement between Sears Holdings Corporation and certain interested underwriters subscribing to, *inter alia*, Policy No. PTNAM1701559 (the “Settlement Agreement”), and its indemnity clause, is enforceable *nun pro tunc*, notwithstanding Debtors’ failure to comply in whole or in part with Fed. R. Bank. P. 9019.
4. Whether the Bankruptcy Court abused its discretion in holding that the Underwriters, as non-debtor third parties, should be protected under Section 362(a) of the Bankruptcy Code by virtue of Debtors’ alleged indemnification obligation in favor of the Underwriters under the Settlement Agreement, notwithstanding the misrepresentations made therein and the fact that such indemnification obligation is severable and/or unenforceable.

¹ The term “Underwriters” is defined collectively as Lex-London (a Division of AIG Europe Limited), AIG Europe Limited, and Lexington UK, among others.

5. Whether the Bankruptcy Court erred in holding that Debtor's alleged indemnification obligation under the Settlement Agreement is an administrative expense claim.

II. Designation of Items to be Included in the Record on Appeal

Pursuant to LBR 8009-1, the following table contains the designation of items for inclusion in the record on appeal, identified by docket number, date, and docket text, pertaining to the above captioned Lead Case No. 18-2353. Each designated item shall also include any and all exhibits and documents annexed to and referenced within such items.

A. Documents Filed in Bankruptcy Court

ECF Docket No.	Date	Description
1240	Dec. 14, 2018	<i>Motion for Entry of Order for the Debtor to (i) Disclose Status of Insurance Claim; (ii) Deposit Any Insurance Proceed Into Separate Account to be Used Exclusively to Repair the Insured Demised Premises; and (iii) Alternatively, Find the Automatic Stay Inapplicable to the Insurance Proceeds (the "Motion to Compel Status of Insurance Claim")</i>
2512	Feb. 8, 2019	<i>Debtors' Objection to Motion for Entry of Order Compelling Debtor to Disclose Status of Insurance Claim and Deposit Any Insurance Proceeds into Separate Account (Santa Rosa Mall, Puerto Rico)</i>
2828	March 13, 2019	<i>Reply to Debtors' Objection to Motion for Entry of Order Compelling Debtor to Disclose Status of Insurance Claim and Deposit Any Insurance Proceeds into Separate Account (Santa Rosa Mall, Puerto Rico)</i>
3475	May 1, 2019	<i>Motion for Relief from Stay and Memorandum in Support Thereof and/or to Declare that the Insurance Proceeds Are Not Part of the Bankruptcy Estate (the "First Motion for Relief from Stay")</i>
4224	June 13, 2019	<i>Debtors' Objection to Motion for Relief from the Automatic Stay and Memorandum in Support Thereof and/or to Declare that the Insurance Proceeds are Not Part of the Bankruptcy Estate</i>
4392	June 28, 2019	<i>Order (I) Approving Disclosure Statement, (II) Establishing Notice and Objection Procedures for Confirmation of the Plan, (III) Approving Solicitation Packages and Procedures for Distribution Thereof, (IV) Approving the Forms and Ballots and Establishing Procedures for Voting on the Plan, and (V) Granting Related Relief</i>
5123	Sept. 11, 2019	<i>Motion for Leave to File Under Seal</i>
5124 ²	Sept. 11, 2019	<i>Supplemental Motion for an Order Finding the Automatic Stay Inapplicable or, in the Alternative, for Relief from the Automatic Stay and Memorandum of Law in Support Thereof (the "Second Motion for Relief from Stay")</i>

² The *Second Motion for Relief from Stay* (Docket No. 5124), and Exhibit XII (Docket No. 5124-12) in support thereof, was filed under seal.

5185	Sept. 19, 2019	<i>Order Granting Santa Rosa Mall's Motion For Leave To File Under Seal</i>
5362	Oct. 11, 2019	<i>Letter to Ferraiuoli LLC Regarding Sears Holdings Corporation, et al., Case No. 18-23538 (RDD), and the Modified Second Amended Joint Chapter 11 Plan of Sears Holdings Corporation and Its Affiliated Debtors</i>
5370	Oct. 15, 2019	<i>Order (I) Confirming Modified Second Amended Joint Chapter 11 Plan of Sears Holdings Corporation And its Affiliated Debtors and (II) Granting Related Relief</i>
5435	Oct. 21, 2019	<i>Notice of Presentment of Stipulation, Agreement[sic], and Order Between the Debtors and Santa Rosa Mall, LLC Granting Limited Relief from the Automatic Stay</i>
5537	Oct. 30, 2019	<i>Stipulation, Agreement[sic], and Order Between the Debtors and Santa Rosa Mall, LLC Granting Limited Relief from the Automatic Stay</i>
6316	Jan. 7, 2020	<i>Motion for Leave to File Under Seal</i>
6317 ³	Jan. 7, 2020	<i>Motion for and an Order Finding the Automatic Stay Inapplicable or, in the Alternative, for Relief from the Automatic Stay and Memorandum in Support Thereof (the "Third Motion for Relief from Stay")</i>
7210	Feb. 10, 2020	<i>Motion For Relief From Amended Stipulated Protective Order</i>
7211	Feb. 10, 2020	<i>Debtors' Objection to Motion for an Order Finding the Automatic Stay Inapplicable or, in the Alternative, for Relief from the Automatic Stay and Memorandum in Support Thereof</i>
7297	Feb. 18, 2020	<i>Declaration of Dale Menendez in Support of Debtors' Objection to Motion for an Order Finding the Automatic Stay Inapplicable or, in the Alternative, for Relief from the Automatic Stay and Memorandum in Support Thereof</i>
7311	Feb. 20, 2020	<i>Reply to Debtors' Objection to Motion for an Order Finding the Automatic Stay Inapplicable or, in the Alternative, for Relief from the Automatic Stay</i>
7326	Feb. 21, 2020	<i>Statement Certifying Compliance with Court directive and filing unredacted version of the Third Motion for Relief from Stay on the public docket.</i>
7531	March 27, 2020	<i>Memorandum of Law on Puerto Rico's Insurance Law in Compliance with Court Order</i>
7785	April 6, 2020	<i>Notice of Errata Regarding Memorandum of Law on Puerto Rico's Insurance Law in Compliance with Court Order</i>
7823	April 16, 2020	<i>Debtors' Limited Response to Landlord's Memorandum of Law on Puerto Rico's Insurance Law in Compliance with Court Order</i>
7834	April 20, 2020	<i>Brief Reply to Debtor's Limited Response to Landlord's Memorandum of Law on Puerto Rico's Insurance Law in Compliance with Court Order</i>
7881	April 30, 2020	<i>Order Denying Motion of Santa Rosa Mall, LLC for Relief from the Automatic Stay as it regards the Underwriters.</i>

³ The *Third Motion for Relief from Stay* (Docket No. 6317), and Exhibit X (Docket No. 6317-10) in support thereof, was filed under seal. Unredacted version of the forgoing are located at Docket No. 7326-1.

B. Transcripts⁴

ECF Docket No.	Date	Description
3758	March 21, 2019	Transcript of hearing on the <i>Motion to Compel Status of Insurance Claim</i>
7397	June 20, 2019	Transcript of hearing on the <i>First Motion for Relief from Stay</i>
N/A	Feb. 24, 2020	Transcript of first hearing on the <i>Third Motion for Relief from Stay</i>
7892	April 23, 2020	Transcript of final hearing on the <i>Third Motion for Relief from Stay</i>

Respectfully submitted.

Dated: May 28, 2020

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⁴ June 24, 2020, February 24, 2020, and April 23, 2020, hearing transcripts were not filed on the public docket and/or remote electronic access is restricted. In accordance with LBR 8009-1(a), which requires that “a party filing a designation of items to be included in a record on appeal must attach to the designation a copy of each designated item that does not appear on the Court docket and file it on the CM/ECF system”, the June 24, 2020, February 24, 2020, and April 23, 2020, hearing transcripts are attached hereto as **Exhibit I, II** and **III** respectively.